

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HEALTH

NO. 1092

11 NOVEMBER 2015

REPUBLIC OF SOUTH AFRICA

NATIONAL PUBLIC HEALTH INSTITUTE OF SOUTH AFRICA BILL

[As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette 39392 of 11 November 2015. The English text is the official text of the Bill]

(MINISTER OF HEALTH)

[B —2015]

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BILL

To provide for the establishment of the National Public Health Institute of South Africa in order to conduct disease and injury surveillance and to provide specialised public health services, public health interventions, training and research directed towards the major health challenges affecting the population of the Republic; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the right for all South Africans to quality health requires the State to take legislative and other measures to achieve the availability of health services, and a system of health protection focused on access, equity, efficiency, and quality;

AWARE that the realisation of the right to quality health can be achieved by, amongst others, the—

- establishment of a single national public entity to provide public health services to the country that performs critical public health functions and that requires a high level of coordination across functions, such as surveillance, and research;
- restructuring and transformation of the public health sector to provide science-based leadership and public health services, and serve as focal point for the efforts to protect and improve health; and

- development of policies that will enable the single national public health entity to provide public health functions and services nationally;

AND IN ORDER TO—

- provide support, expertise and advice to government to achieve improvements in the health of the population; and
- provide coordinated disease and injury surveillance, research, training and workforce development, monitoring and evaluation of services and interventions directed towards the major health problems affecting the population,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—

"Minister" means the Minister of Health;

"NAPHISA" means the National Public Health Institute of South Africa established by section 2;

"prescribed" means prescribed by regulation made in terms of this Act;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"this Act" includes any regulation made in terms of this Act.

Establishment of National Public Health Institute of South Africa

2. (1) There is hereby established a juristic person to be known as the National Public Health Institute of South Africa, comprising of divisions dealing with the following:

- (a) Communicable Diseases;
- (b) Non-Communicable Diseases;
- (c) Cancer Surveillance; and
- (d) Injury and Violence Prevention.

(2) The Public Finance Management Act applies to NAPHISA.

(3) NAPHISA is funded by—

- (a) money appropriated by Parliament;
- (b) fees received for services rendered;
- (c) income earned on surplus moneys deposited or invested;
- (d) grants, donations and bequests made to it;
- (e) royalties; and
- (f) money received from any other source.

Functions of NAPHISA

3. (1) NAPHISA must—

- (a) promote co-operation between the Republic and other countries with regard to the epidemiological surveillance and management of diseases and injuries;
- (b) coordinate, develop or maintain surveillance systems to collect, analyse and interpret health data to guide health interventions;

- (c) use surveillance data to advise on setting health policies, priorities and planning;
- (c) use public health information for monitoring and evaluation of policies and interventions;
- (d) coordinate reference laboratory and referral services;
- (e) provide leadership and direction to provinces and local authorities in disease and injury surveillance and outbreak response;
- (f) strengthen capacity of the health workforce in health surveillance to reduce the burden of disease and injury;
- (g) strengthen cross border and regional public health efforts.
- (h) strengthen epidemiology and surveillance of communicable diseases, non-communicable diseases, cancer and injury and violence prevention;
- (i) advise the Minister on strategies to improve the health of the population;
- (j) support the health response and provide recommendations to government on control measures for disease outbreaks and mitigating risks and hazards for injury and violence;
- (k) collaborate with relevant government departments and government agencies to implement communication strategies on public health issues and outbreak response;
- (l) provide technical support to all spheres of government and other regulatory bodies on surveillance of communicable diseases, non-communicable diseases, cancer, injury and violence prevention;
- (m) conduct research to inform policy and guidelines on communicable diseases, non-communicable diseases, cancer surveillance, injury and violence

prevention and develop processes for dissemination of research findings to key stakeholders;

- (n) strengthen advocacy, social mobilisation and partnerships for addressing communicable diseases, non-communicable diseases, cancer surveillance and injury and violence prevention;
- (o) provide training and technical information on health issues to health professionals, government and regulatory bodies;
- (p) contribute to human resource development in public health; and
- (q) maintain accredited reference and specialised laboratories for pathogen detection, disease and injury surveillance and monitoring, outbreak response and the provision of scientific evidence to prevent and control infectious diseases.

(2) For the purposes of subsection (1)(d), "referral services" means any clinical or diagnostic services that require specialist knowledge, skills and interventions.

(3) NAPHISA may—

- (a) liaise with any other regulatory authority or institution and may, without limiting the generality of this power, require the necessary information from, exchange information with and receive information from any such authority or institution in respect of matters of common interest;
- (b) negotiate cooperative agreements with any regulatory authority or institution in order to ensure the consistent application of the principles of this Act;
- (c) undertake operational research, on its own or in association or partnership with a tertiary education institution;

- (d) cooperate with persons and institutions undertaking basic research in the Republic and in other countries by the exchange of scientific knowledge and the provision of access to the resources and specimens available to NAPHISA;
- (e) participate in joint research operations with government departments, tertiary institutions, museums, scientific institutions and any other persons;
- (f) co-operate with educational authorities, scientific or technical societies or industrial institutions representing employers and employees for the promotion of the instruction and training of health professionals, scientists, researchers, technical experts and other supporting personnel in tertiary institutions;
- (g) enter into contracts, within or outside the Republic, with any person, government or institution, and may execute any contract, deed or other document in the Republic or any foreign country;
- (h) purchase or acquire any movable or immovable property;
- (i) manage, insure, lease, sell, mortgage, dispose of, develop, maintain, improve or in any other way deal with any of its property or assets;
- (j) apply for, purchase or by any other means acquire, protect, extend, renew, deal with or alienate any patents, patent rights, licences, trademarks, concessions or other rights;
- (k) borrow money, within or outside the Republic, in line with the Public Finance Management Act;
- (l) invest money in accordance with the framework prescribed in section 7 of the Public Finance Management Act;
- (m) open and operate banking accounts in terms of section 7 of the Public Finance Management Act;

- (n) make, draw, issue, execute, accept, endorse or discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;
- (o) enter into indemnities, guarantees and surety ships and secure payment thereunder in line with the Public Finance Management Act;
- (p) enter into agreements to facilitate or secure the payment of commitments and to this end indemnify any person or cede, exchange or cancel agreements;
- (q) undertake and execute any trust;
- (r) form and have an interest in any company for—
 - (i) the purpose of acquiring the business or all or any assets or liabilities, or both, of any company; or
 - (ii) any other purpose which directly or indirectly benefits NAPHISA;
- (s) take part in the management, supervision and control of the business or operations of any company or business;
- (t) enter into partnerships;
- (u) make donations to further the interests of NAPHISA;
- (v) act as principal, agent, contractor or trustee;
- (w) charge for the rendering of laboratory services and other services;
- (x) remunerate any person for services rendered in the operation and development of NAPHISA's business;
- (y) appoint officers and employees at such remuneration and on such conditions subject to the relevant labour legislation;
- (z) pay gratuities and pensions to its officers and employees;
- (zA) establish and manage pension schemes, in consultation with the Minister of Finance, medical aid schemes and other incentive schemes for its officers and employees, and appoint trustees and other officials for such schemes;

(zB) produce and sell by-products.

Governance and control of NAPHISA

4. (1) NAPHISA is governed and controlled, in accordance with this Act, by its Board.

(2) The Board is the accounting authority of NAPHISA and must ensure that it fulfills its responsibilities in terms of Chapter 6 of the Public Finance Management Act.

Composition of Board

5. (1) The Board consists of the following members, appointed by the Minister, taking into account, among other things, the appropriate representation of race, gender and disability:

- (a) An official from the national Department of Health;
- (b) two members who have special knowledge in—
 - (i) economics, financial matters or accounting; and
 - (ii) legal matters;
- (c) four members comprising one member each with special knowledge in—
 - (i) communicable diseases;
 - (ii) non-communicable diseases;
 - (iii) cancer surveillance; and
 - (iv) injury and violence prevention;
- (d) the Chief Financial Officer of NAPHISA;

- (e) The Chief Executive Officer of NAPHISA; and
- (f) one member nominated by the schools of public health within publicly funded higher education institutions.

Appointment of members of Board

6. (1) The Minister must, before appointing the members contemplated in section 5(1)(b) and (c), by notice in the *Gazette* and in two or more nationally circulating newspapers in the Republic, invite all interested persons to nominate, within the period specified in the notice, persons who in the opinion of such interested persons are fit to be so appointed, stating the grounds upon which such opinion is based.

(2) If a suitable person or the required number of persons is not nominated in accordance with subsection (1), the Minister must appoint an appropriate person who qualifies to be appointed in terms of this Act.

(3) A member of the Board holds office for a period of at least five years as the Minister may determine at the time of appointment, and is eligible for re-appointment.

(4) A member of the Board, excluding a member who is in the full-time employment of the State, must be appointed on such conditions as the Minister may, with the concurrence of the Minister of Finance, determine.

(5) If the number of members of the Board is reduced to such an extent that a quorum cannot be obtained, the Minister may appoint suitably qualified persons on a temporary basis to serve on the Board until new members are appointed in terms of this section.

Chairperson and vice-chairperson of Board

7. (1) The Minister must appoint a chairperson and vice-chairperson of the Board from the members contemplated in section 5(1)(b) and (c).

(2) Whenever the chairperson of the Board is absent or unable to perform his or her functions as chairperson, the vice-chairperson must act as chairperson and, if the vice-chairperson is absent or unable to act as chairperson, the members must designate another member of the Board to act as chairperson until the chairperson or vice-chairperson is available.

(3) Any person acting as chairperson of the Board in terms of subsection (2) must perform all the functions of the chairperson.

Disqualification from membership of Board, vacation of office by member, removal of member from Board and dissolution of Board

8. (1) A person may not be appointed as a member of the Board if that person—

- (a) is not a South African citizen and ordinarily resident in the Republic;
- (b) is an unrehabilitated insolvent;
- (c) has at any time been convicted of an offence involving dishonesty, whether in the Republic or elsewhere, and sentenced to imprisonment without the option of a fine;
- (d) has been removed from an office of trust;

- (e) is an employee of NAPHISA other than a member contemplated in section 5;
or
- (f) is disqualified in terms of section 69 of the Companies Act, 2008 (Act No. 71 of 2008).

(2) A member of the Board must vacate his or her office if—

- (a) he or she becomes disqualified in terms of subsection (1), from being appointed as a member of the Board;
- (b) he or she submits his or her resignation to the Minister in writing;
- (c) he or she is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (d) he or she has, without the leave of the Board, been absent from more than two consecutive meetings of the Board;
- (e) the Minister withdraws the appointment because in the opinion of the Minister, the member is incompetent or unfit to fulfill his or her duties;
- (f) he or she ceases to be ordinarily resident in the Republic.

(3) If a member of the Board vacates his or her office in terms of subsection (2), the Minister may, subject to section 6, appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.

(4) The Minister may remove a Board member from the office on account of misconduct or inability to perform his or her duties efficiently after due inquiry.

(5) The Minister may dissolve the Board for failure to perform its duties in terms of the Act after due inquiry.

Meetings of Board

9. (1) The meetings of the Board and the conduct of business at meetings must be done in accordance with the rules determined by the Board.

(2) A quorum for a meeting of the Board is the majority of its members.

(3) A decision of the majority of the members of the Board present at any meeting constitutes a decision of the Board and in the event of an equality of votes the member presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(4) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of a vacancy on the Board, or that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Board who were present at the time and entitled to sit as members.

(5) Minutes of the proceedings of every meeting of the Board must be prepared and entered in a book kept for that purpose.

(6) Minutes of the proceedings of each meeting must be submitted at the next meeting of the Board and, if passed as correct, must be confirmed by the signature of the chairperson or other member presiding thereat and may, when so confirmed, be evidence in a court of law of the proceedings of the first-mentioned meeting.

Committees of Board

10. The Board may appoint—

- (a) one or more committees consisting of Board members; and
- (b) expert advisory committees consisting of members other than members of the Board,

to assist it in the performance of its functions.

Appointment of Chief Executive Officer

11. (1) The Board must, in consultation with the Minister, appoint a fit and proper and suitably qualified South African citizen as the Chief Executive Officer of NAPHISA.

(2) The Chief Executive Officer holds office for a term of five years and may be reappointed for such additional terms as the Minister may determine.

(3) The appointment of a person as the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Board.

(4) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

(5) The Board may, in consultation with the Minister, remove the Chief Executive Officer from office on account of serious misconduct, incapacity or incompetence, after affording him or her reasonable opportunity to be heard and subject to applicable legislation.

(6) If the Chief Executive Officer is unable to perform his or her functions, or during a vacancy in the office of Chief Executive Officer, the Board may, in consultation with the Minister, designate another employee of NAPHISA to act as Chief Executive Officer.

(7) No person may be designated as an acting Chief Executive Officer for a period longer than 180 days.

Functions of Chief Executive Officer

12. (1) The Chief Executive Officer—

- (a) is the administrative head of NAPHISA;
- (b) is responsible for the proper and diligent implementation of the Public Finance Management Act; and
- (c) must appoint suitably qualified persons as employees of NAPHISA in accordance with an organisational structure and on terms and conditions approved by the Board.

(2) As administrative head of NAPHISA, the Chief Executive Officer is responsible for—

- (a) delivering on the agreed mandate of NAPHISA as determined by the Board in terms of this Act;
- (b) the formation and development of internal rules and directives for an efficient administration;
- (c) the organisation and control of staff;
- (d) the maintenance of discipline;
- (e) the effective deployment and utilisation of staff to achieve maximum operational results;

- (f) signing of memoranda of understanding with key stakeholders;
- (g) the issuing of guidelines regarding the manner in which claims should be handled; and
- (h) the exercise of any such powers and performance of any such duties as may be delegated or assigned to him or her by the Board.

Accountability of and reporting by Chief Executive Officer

13. (1) The Chief Executive Officer must, subject to the Public Finance Management Act—

- (a) cause the necessary accounting and other records to be kept; and
- (b) in consultation with the Board, prepare and submit to the Minister an annual report for approval by the Minister within five months after the end of the financial year.

(2) The annual report referred to in subsection (1) must include—

- (a) audited annual financial statements by the Auditor-General;
- (b) the Auditor-General's report; and
- (c) a detailed report of the activities of NAPHISA undertaken during the year to which the audit relates.

(3) The Minister must table in Parliament a copy of the annual report, financial statements and the audit report on those statements within one month after receipt thereof if Parliament is in session or, if Parliament is then not in session, within one month after the commencement of its next ensuing session.

(4) The Chief Executive Officer must, once the annual report, financial statements and the audit report have been tabled in Parliament, make the

annual report, financial statements and the audit report on those statements accessible to the public.

(5) Notwithstanding subsections (1) and (2), the Board or the Chief Executive Officer, as the case may be, must upon request by the Minister—

- (a) furnish the Minister with information or a report in respect of any case, matter or subject dealt with by NAPHISA; and
- (b) provide the Minister with reasons for any decision taken by the Board, the Chief Executive Officer or any other employee of NAPHISA.

Transfer or secondment of certain persons to or from employ of NAPHISA

14. (1) A person who is in full time employ of the State or of an institution receiving financial aid from the State may, with his or her consent and subject to the laws governing the public service and the approval of the Chief Executive Officer, be transferred or seconded to the employ of NAPHISA.

(2) A person who is in the employ of NAPHISA may, with his or her consent and subject to the laws governing the public service and the approval of the Chief Executive Officer, be transferred or seconded to the employ of the State or an institution receiving financial aid from the State.

(3) A person who is in the employ of another institution may, with his or her consent and subject to the laws governing the public service and the approval of the Chief Executive Officer of that institution, be transferred or seconded to the employ of NAPHISA.

(4) A person who is in the employ of the NAPHISA may, with his or her consent and subject to the laws governing the public service and the approval of

the Chief Executive Officer, be transferred or seconded to the employ of another institution.

(5) The rights, privileges and benefits of an employee contemplated in subsection (1) or (2) by virtue of his or her conditions of service as an employee of NAPHISA, the State or an institution receiving financial aid from the State may not be adversely affected by a transfer or secondment.

Intellectual property rights

15. (1) The rights in respect of any invention or design of any works eligible for copyright protection by an employee of NAPHISA in the course and scope of the employee's employment vests in NAPHISA.

(2) NAPHISA may in its discretion, but subject to such conditions as the Minister may determine, assign or dispose of any rights contemplated in subsection (1).

(3) NAPHISA must, with the regard to research conducted by the employees of NAPHISA—

- (a) subject to properly informed consent, ensure that in work conducted in respect to indigenous knowledge, written information transfer and material transfer agreements are established before the undertaking of research; and
- (b) protect, with the consent of the parties, any work, invention, discovery or improvement derived from indigenous knowledge, originally held by any person or community, in such a manner that the person or community participates in the benefits arising from such protection.

(4) If the rights in respect of an invention or design properly registered in the Republic in terms of subsection (1) are vested in NAPHISA or assigned to NAPHISA in terms of subsection (2), NAPHISA must award the person responsible for the invention financial participation by him or her in respect of the proceeds derived from such invention or design at such a percentage as may be prescribed.

(5) NAPHISA must ensure that the person contemplated in subsection (4) receives the payment contemplated in subsection (4) timeously.

(6) NAPHISA must, with regard to research conducted by employees of NAPHISA in the area under the jurisdiction of a traditional leader, notify the National House of Traditional Leaders, in writing, of its intention to conduct such research.

Delegation of functions

16. (1) The Board may, subject to such conditions as it may determine, delegate to the chairperson, any member or committee of the Board or the Chief Executive Officer any function entrusted to the Board under this Act.

(2) The Chief Executive Officer may delegate to an employee of NAPHISA any function entrusted to the Chief Executive Officer under this Act or delegated to the Chief Executive Officer in terms of subsection (1).

(3) A delegation in terms of subsection (1) or (2) does not preclude the performance of that function by the Board or the Chief Executive Officer, as the case may be.

(4) The delegation of a function in terms of subsection (1) or (2)—

- (a) must be in writing and may be subject to such terms and conditions of the Board or Chief Executive Officer may determine or impose;
- (b) may at any time be amended or revoked by the Board or Chief Executive Officer; and
- (c) does not divest the Board or Chief Executive Officer of the responsibility concerning the performance of that function.

Limitation of liability

17. No member of the Board, employee of NAPHISA or other person performing work for NAPHISA is liable in respect of anything done or omitted in good faith in the performance of any function in terms of this Act.

Regulations

18. (1) The Minister may make regulations regarding—

- (a) any matter which in terms of this Act may or must be prescribed;
- (b) disease and injury surveillance;
- (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) The Minister must, not less than three months before any regulation is made in terms of subsection (1), cause a copy of the proposed regulation to be published in the *Gazette* together with a notice declaring his or her intention to make that regulation and inviting interested persons to furnish him or her

with their comments thereon or any representations they may wish to make in regard thereto.

(3) Subsection (2) does not apply in respect of—

- (a) any regulation made by the Minister which, after the provisions of that subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him or her in pursuance of a notice issued in terms of subsection (1); or
- (b) any regulation in respect of which the Minister, after consultation with the Board, is of the opinion that the public interest requires it to be made without delay.

(4) A regulation made under this section may, for any contravention thereof or failure to comply therewith, prescribe a fine or imprisonment for a period not exceeding three months.

Transfer of certain property belonging to State to NAPHISA

19. Any immovable property belonging to the State may be transferred to NAPHISA on such conditions as the Minister with the concurrence of the minister of Finance may determine in order to enable NAPHISA to perform its functions.

Transfer of employees, assets and liabilities from National Health Laboratory Service to NAPHISA

20. (1) A person who is employed by the National Health Laboratory Service established by section 3 of the National Health Laboratory Service Act, 2000

(Act No. 37 of 2000), immediately before the commencement of this Act and who was transferred to the National Health Laboratory Service in terms of item 2 of the Schedule to the said Act by virtue of him or her being an employee of the National Institute for Virology must, in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour, be transferred to NAPHISA on the date when this section takes effect.

(2) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (1) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.

(3) A person transferred to the NAPHISA in terms of subsection (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.

(4) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.

(5) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when a person contemplated in subsection (1) takes up employment at NAPHISA.

(6) When the employees referred to in subsection (1) are transferred to NAPHISA, all assets and liabilities of the National Health Laboratory Service, referred to in that subsection that were transferred to the National Health

Laboratory Service in terms of item 2 of the Schedule to the National Health Laboratory Service Act, 2000 (Act No. 37 of 2000), must be transferred to and vest in NAPHISA at the same date.

Short title and commencement

21. This Act is called the National Public Health Institute of South Africa Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.